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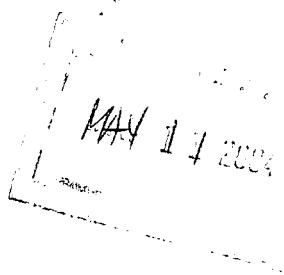
May 11, 2004



Michele C. Natal
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BY HAND

U.S. Securities and Exchange Commission
Division of Investment Management
450 Fifth Street, N.W.
Washington, D.C. 20549



PROCESSED

MAY 18 2004

**THOMSON
FINANCIAL**

Re: The PIMCO funds listed on Exhibit A attached hereto (collectively, the "PIMCO Funds")
(File No. 811-6161)

Ladies and Gentlemen:

On behalf of the PIMCO Funds, please find enclosed a copy of the following complaint, which is being filed pursuant to Section 33 of the Investment Company Act of 1940:

Segel v. Allianz Dresdner Asset Management of America L.P., Civil Action No. 04-494-AHS (CTx), United States District Court for the Central District of California, Southern Division (filed on April 28, 2004). The complaint is a derivative action filed on behalf of the PIMCO Funds and other funds in the PIMCO fund family against the PIMCO Funds' investment advisers and sub-advisers an affiliated adviser, their corporate parents and the PIMCO Funds' trustees.

Please direct any questions or comments relating to the enclosed materials to the undersigned at the above number or Michael G. Doherty, Esq. at (212) 497-3612 or David C. Sullivan, Esq. at (617) 951-7362.

Please acknowledge receipt of this letter and the materials being submitted for filing by stamping the enclosed copy of this letter and returning it to the messenger.

ROPES & GRAY LLP

U.S. Securities and Exchange Commission - 2 -

March 8, 2004

Respectfully submitted,

Michele C. Natal / ERS

Michele C. Natal

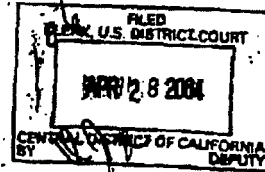
Enclosure

cc: Newton B. Schott, Jr., Esq. (w/o encl.)
Joseph B. Kittredge, Jr., Esq. (w/o encl.)
David C. Sullivan, Esq. (w/o encl.)
Harvey J. Wolkoff, Esq. (w/o encl.)
Michael G. Doherty, Esq. (w/o encl.)
Gail B. Spayde, Esq. (w/o encl.)

Exhibit A

PIMCO ASSET ALLOCATION FUND
PIMCO PEA VALUE FUND
PIMCO PEA RENAISSANCE FUND
PIMCO PEA GROWTH AND INCOME FUND
PIMCO PEA GROWTH FUND
PIMCO PEA TARGET FUND
PIMCO PEA OPPORTUNITY FUND
PIMCO PEA INNOVATION FUND
PIMCO NFJ LARGE-CAP VALUE FUND
PIMCO NFJ DIVIDEND VALUE FUND
PIMCO NFJ SMALL-CAP VALUE FUND
PIMCO CCM CAPITAL APPRECIATION FUND
PIMCO CCM MID-CAP FUND
PIMCO RCM LARGE-CAP GROWTH FUND
PIMCO RCM TAX-MANAGED GROWTH FUND
PIMCO RCM MID-CAP FUND
PIMCO RCM GLOBAL SMALL-CAP FUND
PIMCO RCM INTERNATIONAL GROWTH EQUITY FUND
PIMCO RCM GLOBAL HEALTHCARE FUND
PIMCO RCM BIOTECHNOLOGY FUND
PIMCO RCM GLOBAL TECHNOLOGY FUND
PIMCO NACM VALUE FUND
PIMCO NACM FLEX-CAP FUND
PIMCO NACM GROWTH FUND
PIMCO NACM GLOBAL FUND
PIMCO NACM INTERNATIONAL FUND
PIMCO NACM PACIFIC RIM FUND

1 FRANCIS M. GREGOREK (144785)
 2 BETSY C. MANIFOLD (182450)
 3 FRANCIS A. BOTTINI, JR. (175783)
 4 RACHELE R. RICKERT (190634)
 5 WOLF HALDENSTEIN ADLER
 6 FREEMAN & HERZ LLP
 7 Symphony Towers
 8 750 B Street, Suite 2770
 9 San Diego, CA 92101
 10 Telephone: 619/239-4599
 11 Facsimile: 619/234-4599



12 Attorneys for Plaintiffs

13 [Additional Counsel Appear On Signature Page]

14 UNITED STATES DISTRICT COURT
 15 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 16 SOUTHERN DIVISION

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15 EDWARD I. SEGEL IRA f/u/b/o)	Case No.
16 EDWARD I. SEGEL and IRIS SEGEL)	SACV 04-494-AHS (CTX)
17 IRA f/u/b/o IRIS SEGEL, derivatively on)	
18 behalf of the PIMCO TOTAL RETURN)	DERIVATIVE COMPLAINT
19 FUND, PIMCO FOREIGN BOND)	
20 FUND, PIMCO REAL RETURN FUND,)	
21 PIMCO COMMODITY REAL RETURN)	
22 STRATEGY FUND, PIMCO LOW)	
23 DURATION FUND, PIMCO FUNDS:)	JURY TRIAL DEMANDED
24 PACIFIC INVESTMENT)	
25 MANAGEMENT SERIES, and the)	
26 "PIMCO FUNDS,")	
27)	
28)	

Plaintiff(s),

[Caption continues on next page]

A list of funds comprising the "PIMCO Funds" or "Funds" is attached to this Derivative Complaint as Exhibit A hereto.

1)
2	vs.)
3	ALLIANZ DRESDNER ASSET)
4	MANAGEMENT OF AMERICA L.P.,)
5	PIMCO ADVISORS DISTRIBUTORS)
6	LLC, PACIFIC INVESTMENT)
7	MANAGEMENT COMPANY LLC, PEA)
8	CAPITAL LLC f/k/a PIMCO EQUITY)
9	ADVISORS LLC, CADENCE CAPITAL)
10	MANAGEMENT LLC, RCM CAPITAL)
11	MANAGEMENT LLC, NICHOLAS-)
12	APFLEGATE CAPITAL)
13	MANAGEMENT LLC, NFJ)
14	INVESTMENT GROUP, L.P.,)
15	KENNETH CORBA, BRENT R.)
16	HARRIS, R. WESLEY BURNS, E.)
17	PHILIP CANNON, VERN O. CURTIS, J.)
18	MICHAEL HAGAN, WILLIAM J.)
19	POPEJOY, TAEGAN GODDARD, JOHN)
20	CASHWELL, DOUGLAS ONGARO,)
21	DAVID HINMAN, SCOTT SPALDING,)
22	CAROL RODGERSON, ANDRE)
23	MALLEGOL, MICHAEL GAFFNEY,)
24	CANARY CAPITAL PARTNERS, LLC,)
25	CANARY INVESTMENT)
26	MANAGEMENT, LLC, CANARY)
27	CAPITAL PARTNERS, LTD., DAVID)
28	BYCK, BREAN MURRAY, INC., JOHN)
	DOES 1-50, and JOHN DOES 51-100,)
	Defendant(s),)
	and)
	PIMCO TOTAL RETURN FUND,)
	PIMCO FOREIGN BOND FUND,)
	PIMCO REAL RETURN FUND, PIMCO)
	COMMODITY REAL RETURN)
	STRATEGY FUND, PIMCO LOW)

[Caption continues on next page]

1 DURATION FUND, PIMCO FUNDS:)
2 PACIFIC INVESTMENT)
3 MANAGEMENT SERIES, and)
4 the "PIMCO FUNDS,")
5 Nominal Defendants.)
6)
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DERIVATIVE COMPLAINT

1
2 Plaintiffs, Edward I Segel IRA f/u/b/o Edward I Segel and Iris Segel IRA
3 f/u/b/o Iris Segel, derivatively on behalf of the PIMCO Total Return Fund, PIMCO
4 Foreign Bond Fund, PIMCO Real Return Fund, PIMCO Commodity Real Return
5 Strategy Fund, PIMCO Low Duration Fund, PIMCO Funds: Pacific Investment
6 Management Series, and each of the PIMCO Funds, hereby complain against the
7 Defendants as follows:

JURISDICTION AND VENUE

8
9 1. This Court has jurisdiction over this action pursuant to Section 44 of
10 the Investment Company Act of 1940 ("Investment Company Act"), 15 U.S.C. §
11 80a-43; Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15
12 U.S.C. § 78aa; and 28 U.S.C. § 1331.

13 2. This Court also has supplemental jurisdiction, pursuant to 28 U.S.C. §
14 1367(a), over the state law claims asserted herein, because they arise out of and are
15 part of the same case or controversy as the federal claims alleged.

16 3. Venue is proper in this judicial district because some or all of the
17 Defendants conduct business in this district and some of the wrongful acts alleged
18 herein took place or originated in this district.

19 4. In connection with the acts and practices alleged herein, Defendants
20 directly or indirectly used the mails and instrumentalities of interstate commerce,
21 including, but not limited to, the mails, interstate telephone communications, and the
22 facilities of the national securities markets and national securities exchanges.

PARTIES**Plaintiffs**

23
24
25 5. Plaintiff Edward I Segel IRA f/u/b/o Edward I Segel, a resident of
26 Montgomery County, Pennsylvania, purchased shares of the PIMCO Low Duration
27 Fund and the PIMCO Real Return Fund and continues to hold such shares.
28

1 6. Plaintiff Iris Segel IRA f/u/b/o Iris Segel, a resident of Montgomery
2 County, Pennsylvania, purchased shares of the PIMCO Total Return Fund, the
3 PIMCO Foreign Bond Fund, the PIMCO Real Return Fund, and the PIMCO
4 Commodity Real Return Strategy Fund and continues to hold such shares.

5 **PIMCO Defendants**

6 7. Defendant Allianz Dresdner Asset Management of America L.P.
7 ("ADAM") is a limited partnership organized under the laws of the State of
8 Delaware. ADAM is one of the largest international financial organizations with
9 more than \$493.58 billion in assets under management as of December 31, 2003.
10 ADAM offers a wide variety of financial services and instruments. Through its
11 subsidiaries and affiliates that act as mutual fund retailers, broker-dealers, and
12 investment advisors, ADAM sells and advises mutual funds, including, but not
13 limited to, the PIMCO Funds. ADAM is located at 888 San Clement, Suite 100,
14 Newport Beach, California 926660.

15 8. Defendant PIMCO Advisors Distributors LLC ("PAD") is a limited
16 liability company organized under the laws of the State of Delaware. PAD is the
17 fund distributor for the PIMCO Funds. One of PAD's responsibilities is reviewing
18 all of the trading activity in various PIMCO funds to determine whether the trades
19 violate the PIMCO Funds' market timing policy and whether such accounts should
20 be halted. PAD facilitated the market timing scheme alleged in this complaint by
21 intentionally establishing accounts for such purpose, processing market timing
22 trades on behalf of certain market timers with full knowledge that such trades
23 violated the PIMCO Funds' market timing policy and in violation of its duty to
24 prevent such trades. Moreover, PAD created monthly reports of the timer's market
25 timing activity in furtherance of the scheme. PAD is located at 2187 Atlantic Street,
26 Stamford, Connecticut 06902.

27 9. Defendant Pacific Investment Management Company LLC ("PIMCO
28 Advisors") is a limited liability company organized under the laws of the State of

1 Delaware. PIMCO Advisors was registered as an investment adviser under the
2 Investment Advisers Act and is a majority owned subsidiary of ADAM with a
3 minority interest held by PIMCO Partners, LLC. PIMCO Partners, LLC is owned by
4 the current managing directors and executive management of PIMCO. PIMCO
5 Advisors, alone or with the sub-advisers described in ¶¶ 10-14, was the adviser to
6 the PIMCO Funds during the period of misconduct alleged herein. As the
7 investment advisor to the PIMCO Funds, PIMCO Advisors directs the investments
8 of the PIMCO Funds in accordance with each fund's investment objectives, policies
9 and restrictions. Where sub-advisers direct the investments of the funds, PIMCO
10 Advisors has the responsibility to oversee the sub-advisers and to recommend their
11 hiring, termination and replacement. Directly, or through third parties, PIMCO
12 Advisors provides the PIMCO Funds with investment management and related
13 administrative services and facilities, including portfolio management and trade
14 execution. PIMCO Advisors and its investment management affiliates had
15 approximately \$469 billion in assets under management as of December 31, 2003.
16 PIMCO Advisors is located at 840 Newport Center Drive, Newport Beach,
17 California 92600.

18 10. Defendant PEA Capital LLC ("PEA"), formerly known as PIMCO
19 Equity Advisors LLC, is a limited liability company organized under the laws of the
20 State of Delaware. PEA is a wholly owned indirect subsidiary of ADAM and was
21 registered as an investment adviser under the Investment Advisers Act. PEA offers
22 investors a wide range of investment products and acts as the sub-adviser and
23 provides investment advisory services to the PEA family of funds (the "PEA
24 Funds"). As a sub-adviser, PEA has full investment discretion with respect to the
25 investment of the PEA Fund's assets, subject to the general supervision of the
26 Adviser, PIMCO Advisors. Accounts managed by PEA had combined assets of
27 approximately \$9.2 billion as of September 30, 2003. PEA is located at 1345
28 Avenue of the Americas, 50th Floor, New York, New York 10105.

11. Defendant Cadence Capital Management LLC ("Cadence"), a limited liability company organized under the laws of the State of Delaware and registered as an investment adviser under the Investment Advisers Act, provides investment advisory services as the sub-adviser to the CCM Capital Appreciation Fund, CCM Mid-Cap Fund, CCM Focused Growth Fund, and the CCM Emerging Companies Fund (the "PIMCO CCM Funds"). Accounts managed by Cadence had combined assets of approximately \$5.7 billion as of December 31, 2003. Cadence is located at 265 Franklin Street, 11th Floor, Boston, Massachusetts 02110.

12. Defendant RCM Capital Management LLC ("RCM"), an indirect wholly-owned subsidiary of Allianz AG and an affiliate of ADAM was registered as an investment adviser under the Investment Advisers Act and provides investment advisory services as the sub-adviser to the RCM Large-Cap Growth Fund, the RCM Tax-Managed Growth Fund, the RCM Mid-Cap Fund, the RCM Biotechnology Fund, the RCM Global Small-Cap Fund, the RCM Global Technology Fund, the RCM Global Healthcare Fund and the RCM International Growth Equity Fund (the "PIMCO RCM Funds"). Accounts managed by RCM had combined assets of approximately \$30.8 billion as of September 30, 2003. RCM is located at Four Embarcadero Center, San Francisco, California 94111.

13. Defendant Nicholas-Applegate Capital Management LLC ("NACM"), a limited liability company existing under the laws of the State of Delaware and subsidiary of ADAM, was registered as an investment adviser under the Investment Advisers Act and provides investment advisory services as the sub-adviser to the NACM Flex-Cap Value Fund, the NACM Global Fund, the NACM Growth Fund, the NACM International Fund, the NACM Pacific Rim Fund and the NACM Value Fund and the International Equity Discipline of the Multi-Discipline Portfolio (the "PIMCO NACM Funds"). Accounts managed by Nicholas-Applegate had combined assets of approximately \$18.3 billion as of September 30, 2003. NACM is located at 600 West Broadway, San Diego, California 92101.

1 14. Defendant NFJ Investment Group, L.P. ("NFJ"), a limited liability
2 company existing under the laws of Delaware and subsidiary of ADAM was
3 registered as an investment adviser under the Investment Advisers Act and provides
4 investment advisory services as the sub-adviser to the to the NFJ Small-Cap Value,
5 NFJ Basic Value and NFJ Dividend Value Funds along with the Small-Cap Value
6 Equity Discipline of the Multi-Discipline Portfolio (the "PIMCO NFJ Funds").
7 Accounts managed by NFJ had combined assets, of approximately \$3.8 billion, as of
8 September 30, 2003. NFJ is located at 2121 San Jacinto, Suite 1840, Dallas, Texas
9 75201.

10 15. Defendant Kenneth Corba ("Corba") is, and at all relevant times was,
11 PEA's CEO, chief investment officer ("CIO") and a portfolio manager of certain
12 funds sub-advised by PEA, including the PEA Select Growth Fund. In that
13 capacity, defendant Corba was responsible for investment decisions and oversight of
14 the mutual funds advised, sub-advised, supervised and organized by PEA. After
15 numerous meetings with the timers described below, i.e. Canary Defendants and
16 Brean Murray brokers, defendant Corba actively solicited, facilitated and authorized
17 the market timing in the PEA funds by, among other actions, engaging Managing
18 Directors and Portfolio Managers of PEA funds to inform them of such
19 arrangements and obtain their acquiescence. In one such arrangement, Corba
20 negotiated and authorized a market timing arrangement in a PEA fund in exchange
21 for Canary deposits of long-term assets in the PEA Select Growth Fund. This
22 arrangement was for the direct personal benefit of defendant Corba since the amount
23 of assets in the PEA Select Growth Fund were relatively small at the time and
24 Canary Defendants' deposit doubled the size of the assets.

25 16. Defendant Taegan Goddard ("Goddard") is, and at all relevant times
26 was, the COO of PEA, and in that capacity he is and was responsible for the day-to-
27 day operations of PEA, including its Legal, Compliance, and Corporate Affairs
28 functions. Defendant Goddard was an active participant in the market timing

1 scheme alleged herein through his facilitation and coordination of meetings, as well
2 as active participation in those meetings, between PEA executives and market
3 timers. Moreover, defendant Goddard directed the involvement of PEA to insure
4 the execution of the market timing arrangement by PEA,

5 17. Defendant John Cashwell ("Cashwell") is, and at all relevant times
6 was, a Senior Vice President of PEA and in that capacity was responsible for the
7 operations of PEA and the activity of the PEA funds. Defendant Cashwell was
8 actively involved in the market timing scheme through his participation in meetings
9 arranging for the market timing activities and his conduct as an officer of the PEA
10 funds in insuring the execution of the market timing arrangement.

11 18. Defendant Douglas Ongaro ("Ongaro") is, and at all relevant times
12 was, a Senior Vice President of Marketing for PIMCO Advisors and in that capacity
13 was responsible for the marketing of the products offered through PIMCO Advisors
14 affiliates and managed by PIMCO Advisors. Defendant Ongaro was actively
15 involved in the facilitation and engagement in the market timing scheme through his
16 solicitation of other PIMCO Fiduciary Defendants to engage in the scheme and
17 active involvement in setting the parameters of the market timing agreement.

18 19. Defendant David Hinman ("Hinman") is, and at all relevant times was,
19 an Executive Vice President of PIMCO Advisors and the portfolio manager of the
20 PIMCO High Yield Fund and in that capacity was responsible for the operations of
21 PIMCO Advisors and the direct financial management of the PIMCO High Yield
22 Fund, including the selection of investments. Defendant Hinman was actively
23 involved in the engagement, facilitation and execution of the market timing scheme
24 through his involvement in setting the parameters of the market timing agreement
25 and his decision to knowingly permit and facilitate market timers in the PIMCO
26 High Yield Fund.

27 20. Defendant Scott Spalding ("Spalding") is, and at all relevant times was,
28 a Vice President of PIMCO Advisors and in that capacity was responsible for the

1 operations of PIMCO Advisors. Defendant Spalding was actively involved in the
2 engagement, facilitation and execution of the market timing scheme including the
3 negotiations with Canary and defendant David Byck that lead to the agreement that
4 allowed Canary to time the PIMCO Funds.

5 21. Defendant Carol Rodgerson ("Rodgerson") is, and at all relevant times
6 was, a Vice President of PIMCO Advisors managing the Shareholder Services
7 division of PIMCO Advisors, the division in charge of monitoring and enforcing the
8 terms present in the PIMCO Funds' prospectuses, including the prevention of
9 market timing. Defendant Rodgerson was an active participant in the market timing
10 scheme through her facilitation of the scheme by directing the Shareholder Services
11 division not to enforce the terms of the PIMCO Funds' prospectuses in so far as they
12 prohibit the market timing activity alleged herein and, instead, insure that Canary's
13 market timing trades were processed. Moreover, defendant Rodgerson directed
14 Shareholder Services to monitor and create monthly reports for the Canary market
15 timing account.

16 22. Defendant Andre Mallegol ("Mallegol") is, and at all relevant times
17 was, a Vice President of Marketing for PIMCO Advisors and in that capacity was
18 responsible for the marketing of the products offered through PIMCO Advisors
19 affiliates and managed by PIMCO Advisors. Defendant Mallegol was an active
20 participant in the market timing scheme through his facilitation and regular review
21 of the market timing arrangement. Among other actions, defendant Mallegol
22 participated in the establishment of the parameters of the market timing agreement
23 and negotiated the agreement increasing Canary's market timing capacity in the
24 PIMCO funds by an additional \$80 million.

25 23. Defendant Michael Gaffney ("Gaffney") is, and at all relevant times
26 was, a portfolio manager of the PEA Opportunity Fund, a fund designated for
27 market timing by the PIMCO Defendants, and the portfolio manager of the PEA
28 Horizon hedge fund, a hedge fund affiliated with the PIMCO Defendants which

1 received "sticky assets" from Canary in exchange for the right to market time other
2 PJMCO Funds. Defendant Gaffney was an active participant in the market timing
3 scheme by his involvement in meeting with Canary to solicit and market an
4 arrangement whereby Canary would be allowed to market time the PEA
5 Opportunity Fund in exchange for a "sticky asset" investment in the PEA Horizon
6 hedge fund, and executing the subsequent agreement.

7 Canary Defendants

8 24. Defendant Canary Capital Partners, LLC ("CCP"), is a New Jersey
9 limited liability company with its principal offices in Secaucus, New Jersey. At all
10 relevant times, CCP was a hedge fund engaged in the business of late trading and
11 timing mutual funds.

12 25. Defendant Canary Capital Partners, Ltd. ("CCP Ltd."), is a Bermuda
13 limited liability company. At all relevant times, CCP Ltd. was also a hedge fund
14 engaged in the business of timing mutual funds.

15 26. Defendant Canary Investment Management, LLC ("CIM"), is a New
16 Jersey limited liability company with its principal offices in Secaucus, New Jersey.
17 At all relevant times, CIM managed the assets of CCP and CCP Ltd. in exchange for
18 a fee equal to 1.5 percent of the assets of Canary plus 25 percent of the profits above
19 a certain threshold. As of July 2003, Canary Asset Management had received
20 approximately \$40 million in Canary management and incentive fees. The size of
21 these fees reflects the phenomenal success Canary enjoyed both in terms of its
22 trading results and the amount of capital it was able to gather in the fund.

23 27. CCP, CCP Ltd., and CIM are collectively referred to herein as
24 "Canary." Canary employed a number of professionals and traders, and used
25 sophisticated computer models and equipment in order to identify and then exploit
26 late trading and timing opportunities. Because so much of its business occurred
27 after the close of U.S. markets, Canary employees regularly worked into the
28 evening. Canary engaged in the illicit market timing scheme alleged herein by

1 utilizing, among others, funds in the PIMCO Funds with the permission, and
2 through the facilitation, of the PIMCO defendants.

3 Market Timing Consultant Defendants

4 28. Defendant Brean Murray, Inc. ("Brean Murray") is a broker-dealer
5 registered with the State of New Jersey. Brean Murray introduced Canary to various
6 mutual fund complexes, including the PIMCO Funds, for the purpose of establishing
7 market timing arrangements, including those that permitted Canary's market timing
8 activity in the PEA Funds. Brean Murray further engaged in the market timing
9 scheme by executing timed trades on behalf of Canary. Brean Murray is located at
10 570 Lexington Avenue, New York, New York.

11 29. Defendant David Byck ("Byck"), a resident of the State of New York,
12 was a market timing capacity consultant that negotiated market timing relationships
13 at various mutual fund complexes on behalf of Canary, including the introduction of
14 Canary to PIMCO.

15 John Does 1-50

16 30. The true identities, roles and capacities of John Does 1-50 have yet to
17 be ascertained (the "PIMCO Fiduciary Defendants"). Included as PIMCO Fiduciary
18 Defendants are insiders, i.e. employees and executives, of ADAM, PIMCO
19 Advisors, PEA, Cadence, RCM, NACM, NFJ, PIMCO Funds: Pacific Investment
20 Management Series, and the PIMCO Funds including, but not limited to, fund
21 managers, advisors, brokers and sales executives who, because of their relationship
22 to the PIMCO Funds had a fiduciary duty to the PIMCO Funds, and breached such
23 fiduciary duty through their participation and facilitation of the market timing
24 scheme alleged herein.

25 John Does 51-100

26 31. The true identities, roles and capacities of John Does 51-100 have yet
27 to be ascertained. Included in John Does 51-100 are hedge funds, hedge fund
28 managers, brokerage firms and fiduciaries to the PIMCO Funds who participated,

1 exploited and perpetrated the unlawful late trading in PIMCO Funds and knowingly
2 violated the policies established, though not enforced because of the breaches of
3 fiduciary duty of the PIMCO Fiduciary Defendants, by the PIMCO Funds. In
4 addition, it includes those entities and individuals who conspired and assisted in
5 exploiting the opportunities provided by the PIMCO Defendants to make illicit
6 trades in the PIMCO Funds. Such defendants directly or indirectly profited by their
7 own, or others', ability to engage in improper late trading and timing at the expense
8 of non-participating PIMCO Funds investors. Furthermore, John Does 51-100
9 actively enticed the PIMCO Defendants to breach the fiduciary duties owed to the
10 PIMCO Funds through numerous means including the deposit of assets in other
11 PIMCO financial vehicles in exchange for the right to make short-term and late
12 trades in the PIMCO Funds. The identities of John Does 51-100 will be disclosed in
13 amendments to this complaint when the true identities are discovered.

14 **Trustee Defendants**

15 32. The following Individual Defendants are each Trustees of the PIMCO
16 Funds: Pacific Investment Management Series (the "PIMCO Trust" or "Trust")²:

17 (a) Brent R. Harris, Chairman of the Board and Trustee (2/1992-
18 present); oversees 71 PIMCO Mutual Funds; Managing Director, PIMCO;
19 Chairman and Director, PIMCO Commercial Mortgage Securities Trust, Inc.;
20 Chairman and Trustee, PIMCO Variable Insurance Trust; Chairman, Director and
21 President, PIMCO Strategic Global Government Fund, Inc.; Director, PIMCO
22 Luxembourg S.A.; and Board of Governors and Executive Committee, Investment
23 Company Institute.

24 (b) R. Wesley Burns, President (7/1987-present) and Trustee
25 (11/1997-present); oversees 70 PIMCO Mutual Funds; Director, PIMCO; President

26 ² Non-defendants Guilford C. Babcock and Thomas P. Kemp served as
27 Trustees until their retirement on June 30, 2003. They were not replaced.
28

1 and Director, PIMCO Commercial Mortgage Securities Trust, Inc.; President and
2 Trustee, PIMCO Variable Insurance Trust; Senior Vice President, PIMCO Strategic
3 Global Government Fund, Inc.; Director, PIMCO Funds: Global Investors Series plc
4 and Director, PIMCO Global Advisors (Ireland) Limited; Formerly, Managing
5 Director, PIMCO and Executive Vice President, PIMCO Funds: Multi-Manager
6 Series.

7 (c) E. Philip Cannon, Trustee (3/2000-present); oversees 114
8 PIMCO Mutual Funds; Director, PIMCO Commercial Mortgage Securities Trust,
9 Inc.; Trustee, PIMCO Variable Insurance Trust; Trustee, PIMCO Funds: Multi-
10 Manager Series; Proprietor, Cannon & Company, an affiliate of Inverness
11 Management LLC, (a private equity investment firm). President, Houston Zoo.

12 (d) Vern O. Curtis, Trustee (2/1995-present); oversees 70 PIMCO
13 Mutual Funds; Director, PIMCO Commercial Mortgage Securities Trust, Inc.;
14 Trustee, PIMCO Variable Insurance Trust; Private Investor.

15 (e) J. Michael Hagan, Trustee (3/2000-present); oversees 70 PIMCO
16 Mutual Funds; Director, PIMCO Commercial Mortgage Securities Trust, Inc.;
17 Trustee, PIMCO Variable Insurance Trust; Director Freedom Communications;
18 Director, Remedy Temp (staffing); Director, Saint Gobain Corporation
19 (manufacturing); Member of the Board of Regents at Santa Clara University;
20 Member of the Board, Taller San Jose; Trustee, South Coast Repertory Theater;
21 Private Investor and Business Consultant.

22 (f) William J. Popejoy, Trustee (7/1993-2/1995 and 8/1995 to
23 present); oversees 70 PIMCO Mutual Funds; Managing Member, Pacific Capital
24 Investors; Trustee, PIMCO Variable Insurance Trust; and Director, PIMCO
25 Commercial Mortgage Securities Trust, Inc.; Formerly, Director, California State
26 Lottery.

27 33. The Trustees elect the officers of the PIMCO Funds, have a fiduciary
28 duty to the Trust and its beneficiaries and a duty to maintain the safety of the assets

1 of the Trust. As indicated above, each Trustee serves as a trustee to numerous funds
2 in the PIMCO Funds. The address of each Trustee is 840 Newport Drive, Newport
3 Beach, California 92660.

4 Nominal Defendants

5 34. Nominal Defendant PIMCO Trust, also known as the PIMCO Funds:
6 Pacific Investment Management Series, is a Massachusetts business trust organized
7 on February 19, 1987. The Trust is registered under the Investment Company Act as
8 an open-end management investment company. The Trust is managed in its entirety
9 by employees and executives of ADAM and its affiliates. The Trust holds the assets
10 of the funds it issues, including, among others, the PIMCO Total Return Fund,
11 PIMCO Foreign Bond Fund, PIMCO Real Return Fund, PIMCO Commodity Real
12 Return Strategy Fund, and PIMCO Low Duration Fund. The Trust is located at 840
13 Newport Center Drive, Newport Beach, California 92660.

14 35. Nominal Defendant PIMCO Total Return Fund is a diversified mutual
15 fund with assets held by the PIMCO Trust with PIMCO Advisors as its advisor and
16 administrator. The PIMCO Total Return Fund seeks total return consistent with
17 preservation of capital and invests primarily in investment grade debt securities.

18 36. Nominal Defendant PIMCO Foreign Bond Fund is a diversified mutual
19 fund with assets held by the PIMCO Trust with PIMCO Advisors as its advisor and
20 administrator. The PIMCO Foreign Bond Fund invests primarily in high-quality,
21 non-U.S. intermediate-term bonds.

22 37. Nominal Defendant PIMCO Real Return Fund is a diversified mutual
23 fund with assets held by the PIMCO Trust with PIMCO Advisors as its advisor and
24 administrator. PIMCO Real Return Fund invests primarily in Treasury Inflation-
25 Protected Securities (TIPS), a unique asset class designed to protect investors'
26 purchasing power from inflation.

27 38. Nominal Defendant PIMCO Commodity Real Return Strategy Fund is
28 a diversified mutual fund with assets held by the PIMCO Trust with PIMCO

1 Advisors as its advisor and administrator. The PIMCO Commodity Real Return
2 Strategy Fund focuses on investments in commodities.

3 39. Nominal Defendant PIMCO Low Duration Fund is a diversified mutual
4 fund with assets held by the PIMCO Trust with PIMCO Advisors as its advisor and
5 administrator. PIMCO Low Duration Fund invests in shorter-term bonds to give
6 higher income than savings accounts and CDs can provide.

7 40. The defendants described in paragraphs 7-23 and 30 are sometimes
8 referred to as the "PIMCO Defendants." The defendants described in paragraphs 9-
9 14 are sometimes referred to as the "Advisors." The defendants described in
10 paragraphs 24-26 are collectively referred to as "Canary." The defendants described
11 in paragraphs 34-39 are sometimes referred to as the Nominal Defendants. The
12 defendants described in paragraph 32 are sometimes referred to as the "Trustee
13 Defendants." The defendants described in paragraph 30 are sometimes referred to
14 as the "PIMCO Fiduciary Defendants." The defendants in paragraphs 28 and 29 are
15 sometimes collectively referred to as the "Market Timing Consultant Defendants."

16 PRELIMINARY STATEMENT

17 41. This derivative action is brought to recover damages for injuries to the
18 PIMCO Total Return Fund, PIMCO Foreign Bond Fund, PIMCO Real Return Fund,
19 PIMCO Commodity Real Return Strategy Fund, PIMCO Low Duration Fund, the
20 PIMCO Trust, and the PIMCO Funds and each of them caused by the Defendants'
21 breaches of fiduciary duty and unlawful and manipulative trading activities and
22 devices in the PIMCO Funds which operated as a fraud and deceit on the Plaintiffs
23 and the Nominal Defendants (hereafter together "Plaintiffs").

24 Fiduciary Duty

25 42. Each of the PIMCO Defendants, the PIMCO Fiduciary Defendants, and
26 the Trustee Defendants owed to the PIMCO Funds and their shareholders the
27 fiduciary duties of loyalty, candor and fair dealing, and under the Investment
28 Company Act, the duty to refrain from charging or collecting excess compensation

1 or other payments for services in order to preserve the funds' property and assets,
2 owed the duty not to place their own financial interests above those of the PIMCO
3 Funds and their shareholders, and owed the duty of full and candid disclosure of all
4 material facts thereto.

5 Manipulative Devices

6 43. Like all other mutual funds, PIMCO Funds shares are valued once a
7 day, at 4:00 p.m. Eastern Time, following the close of the financial markets in New
8 York. The price, known as the Net Asset Value ("NAV"), reflects the closing prices
9 of the securities that comprise a particular fund's portfolio plus the value of any
10 uninvested cash that the fund manager maintains for the fund. Thus, although the
11 shares of a mutual fund are bought and sold all day long, the price at which the
12 shares trade does not change during the course of the day. Orders placed any time
13 up to 4:00 p.m. are priced at that day's NAV, and orders placed after 4:01 p.m. are
14 priced at the next day's NAV. This practice, known as "forward pricing," has been
15 required by law since 1968.

16 Late Trading

17 44. Because of forward pricing, mutual funds are susceptible to a
18 manipulative practice known as "late trading." Late trading is the unlawful practice
19 of allowing some investors to purchase mutual fund shares after 4:00 p.m. at that
20 day's NAV, even though such after-hours trades should be priced at the next day's
21 NAV. Late traders seek to take advantage of events that occur after the close of
22 trading on any given day, while purchasing shares of mutual funds at prices that do
23 not take those events into consideration. For example, if a mutual fund invests in
24 the stock of a particular company that announces positive results at 5:00 p.m. after
25 the close of trading, a late trader gets to buy shares of that mutual fund at the 4:00
26 p.m. price, which does not reflect the favorable information. When trading opens
27 the next day, the price of the affected company's stock will rise, causing the fund's
28

1 NAV to rise. The late trader can either hold onto his mutual fund shares, acquired at
2 yesterday's cheaper price, or sell those shares and realize an immediate profit.

3 45. "Late trading can be analogized to betting today on yesterday's horse
4 races."³ The late trader's arbitrage profit comes dollar-for-dollar out of the mutual
5 fund that the late trader buys. When the late trader redeems his shares and claims
6 his profit, *the mutual fund manager has to either sell stock, or use cash on hand --*
7 *stock and cash that used to belong in the fund -- to give the late trader his gain.* The
8 late trader's profit is revenue withheld from the mutual fund. The forward pricing
9 rule was enacted precisely to prevent this kind of abuse. See 17 C.F.R. § 270.22c-
10 1(a).

11 Timing

12 46. Another manipulative practice used by Defendants to exploit mutual
13 fund pricing is known as "timing," which involves short-term "in-and-out" trading
14 of mutual fund shares. One timing scheme is "time zone arbitrage," which takes
15 advantage of the fact that some funds use "stale" prices to calculate NAV. These
16 prices are "stale" because they do not necessarily reflect the "fair value" of such
17 securities as of the time the NAV is calculated. A typical example is a U.S. mutual
18 fund that invests in Japanese companies. Because of the time zone difference, the
19 Japanese market closes at 2:00 a.m. New York time. When the NAV is calculated at
20 4:00 p.m. in New York, it is based upon market information that is fourteen hours
21 old. If there have been positive market moves during the New York trading day
22 that will cause the Japanese market to rise when it opens later, the stale Japanese
23 prices will not reflect the price change and the fund's NAV will be artificially low.
24 Put another way, the NAV does not reflect the true current market value of the
25 stocks held by the fund. On such a day, a trader who buys the Japanese fund at the

26 ³ *State of New York v. Canary Capital Partners et al.*, Supr. Ct. of N.Y.,
27 Complaint ¶ 10.
28

1 "stale" price is virtually assured of a profit that can be realized the next day by
2 selling. By "timing" the fund, an investor seeks to earn repeated profits in a single
3 mutual fund.

4 47. Another "timing" scheme is "liquidity arbitrage." Under this scheme,
5 a trader seeks to take advantage of stale prices in certain infrequently traded
6 investments, such as high-yield bonds or the stock of small capitalization
7 companies. The fact that such securities may not have traded for hours before the
8 4:00 p.m. closing time can render the fund's NAV stale, and thus open it to being
9 timed.

10 48. The device of "timing" is inconsistent with and inimical to the purpose
11 for mutual funds as long-term investments. Mutual funds are designed for buy-and-
12 hold investors, and are therefore the preferred investment instruments for many
13 retirement and savings accounts. Nonetheless, certain investors attempt to make
14 quick in-and-out trades in order to exploit the inefficiency of mutual fund pricing.
15 The effect of "timing" is to artificially increase the frequency of transactions in a
16 mutual fund, and consequently increase the fund's transaction costs substantially
17 above what would be incurred if only buy-and-hold investors were trading in the
18 fund's shares. The increased transaction costs, as well as additional capital gains
19 taxes, reduces the assets of the fund and in turn its NAV.

20 49. Continued *successful* late-trading or timing often depends, as it did
21 here, on the complicity of a funds' management.

22 50. The PIMCO Fiduciary Defendants, Canary and John Does 51-100
23 obtained assistance to engage in the illicit scheme directly from the Advisor from as
24 early as October 2001 until September 2003. By failing to enforce and/or follow
25 regulations and policies listed in PIMCO Funds' prospectuses prohibiting market
26 timing, the Advisor allowed and encouraged Canary and John Does 51-100 to
27 rapidly buy and sell PIMCO Funds, the very funds that defendants and their co-
28 conspirators had the fiduciary duty to oversee and protect from such malfeasance, in

1 a manner that was explicitly prohibited by PIMCO Funds prospectuses. This
2 conduct continued for a substantial amount of time. It was well known by the
3 PIMCO Defendants, the Advisor, and amongst the fiduciaries responsible for the
4 management of the PIMCO Funds, and was merely reflective of the self-dealing that
5 pervaded the PIMCO Defendant entities.

6 51. Because of the harm timing can cause, honest fund managers often seek
7 to minimize the disruptive impact of timers by keeping cash on hand to pay out the
8 timers' profits without having to sell stock. However, such efforts by honest fund
9 managers to counter the ill effects of "timing" on their funds does not eliminate the
10 practice, it only reduces it. Indeed, one recent study estimated that U.S. mutual
11 funds lose \$4 billion per year to timers. See Eric Zitzewitz, Who Cares About
12 Shareholders? Arbitrage-Proofing Mutual Funds (October 2002), [http://faculty-](http://faculty-gsb.stanford.edu/zitzewitz/Research/arbitrage1002.pdf)
13 [gsb.stanford.edu/zitzewitz/Research/arbitrage1002.pdf](http://faculty-gsb.stanford.edu/zitzewitz/Research/arbitrage1002.pdf). While it is virtually
14 impossible for fund managers to identify *every timing trade*, large movements in
15 and out of funds, like those made by Canary and John Does 51-100 in the PIMCO
16 Funds, are easily apparent.

17 52. Although such trading was explicitly prohibited by the PIMCO Funds
18 prospectuses, PIMCO Fiduciary Defendants intentionally ignored market timing
19 trades or did not prohibit them.

20 53. Fund managers generally have the power simply to reject timers'
21 purchases. Many funds have also instituted short-term trading fees ("early
22 redemption fees") that effectively wipe out the arbitrage that timers exploit.
23 Typically, these fees go directly into the affected fund to reimburse it for the costs of
24 short term trading. These fees are waived if the fund managers, i.e. the Advisor, are
25 assisting the timer, or as here, are the active participants in the timing scheme.

26 54. In addition, fund managers are required to update NAVs at the end of
27 the day in New York when there have been market moves that might render the
28 NAV stale. This is called giving the fund a "fair value", and eliminates the timer's

1 arbitrage. As fiduciaries for their funds, they are obligated to use their best efforts
2 to employ these available tools to protect their customers from the dilution that
3 timing causes.

4 FACTUAL BACKGROUND

5 55. From at least October 2001 until September 2003, Canary and John
6 Does 51-100, with the knowledge and assistance of the Advisor and the PIMCO
7 Defendants, engaged in the two separate market timing schemes as described herein
8 in various PIMCO Funds.

9 56. The first market timing arrangement, which began in October 2001 and
10 ended in approximately May 2003, involved the market timing agreement between
11 Canary and the PIMCO Defendants. The agreement provided Canary with market
12 timing capacity of \$100 million in the PEA Funds in exchange for Canary placing
13 \$25 million of long-term assets ("sticky assets") in a separate fund in the PEA Select
14 Growth Fund, a fund managed by defendant Corba.

15 57. The second market timing arrangement, which began in January 2003
16 and ended during September 2003, involved the market timing agreement between
17 defendant Byck and the PIMCO Defendants. The agreement provided defendant
18 Byck's clients, including Canary, with \$80 million of timing capacity and
19 permission to trade 12 times per year in funds offered by the PIMCO Funds Trust.

20 Scheme 1: The Canary and PEA Market Timing Arrangement

21 58. Beginning in October 2001 and continuing until May 2003, Canary and
22 the PEA Advisors entered an agreement, as initially arranged by defendant Brean
23 Murray, that provided PEA with \$25 million in "sticky assets" in the PEA Select
24 Growth Fund in exchange for permission and assistance for Canary to market time
25 the PEA Funds. The agreement provided that Canary would place its market timing
26 orders through defendant Brean Murray and required that PEA inform the market
27 timing police at PAD to allow the excessive Canary trades. In addition, the
28 agreement called for PEA to provide Canary with the individual holdings of the

1 PEA Funds. With such knowledge, Canary was able to trade against, in advance of,
2 or as a hedge to, the PEA Funds. This also enhanced Canary's ability to utilize the
3 PEA Funds for market timing purposes.

4 59. In October of 2001, defendant Goddard arranged for a meeting between
5 defendant Cashwell and a representative of Circle Trust to discuss a client of Circle
6 Trust's, Brean Murray, that was interested in market timing capacity in the PEA
7 Funds. This resulted in a subsequent meeting between defendant Corba and brokers
8 from defendant Brean Murray, who conducted market timing on behalf of Canary.

9 60. On November 2001, defendants Corba, Goddard and Cashwell met
10 with Brean Murray to discuss the potential market timing arrangement. Subsequent
11 to this meeting, defendant Corba made extensive efforts to implement and facilitate
12 the market timing arrangement with Canary. This included, among other actions,
13 obtaining approval by other executives of PIMCO Funds and meeting with the
14 Managing Directors and Portfolio Managers, John Does 1-50, of PEA to inform
15 them of the market timing relationship with Canary.

16 61. By the time defendant Corba had completed his efforts to urge the
17 adoption of the market timing agreement, it had been preliminarily agreed upon that
18 Canary would place its "sticky assets" in the PEA Select Growth Fund, a fund
19 managed by Corba. The prospective \$25 million sticky asset deposit nearly doubled
20 the assets under management in the PEA Select Growth Fund.

21 62. On January 30, 2002, Canary, through Brean Murray, arranged to
22 transfer the \$25 million of "sticky assets" to the PEA Select Growth Fund.

23 63. On February 8, 2002, Brean Murray reallocated previous investments
24 in PIMCO Funds that had been placed through Bank of America, to the PIMCO
25 Funds in which the PIMCO Fiduciary Defendants had granted Canary market-
26 timing capacity. The PIMCO Funds designated for market timing by Canary
27 included the PEA Target Fund and the PEA Innovation Fund.
28

1 64. The PIMCO Defendants further profited and otherwise benefited from
2 the market timing arrangement because when Canary's timing money was not
3 invested in the designated funds cleared for market timing, it was exchanged in and
4 out of money market and fixed income funds managed by the PIMCO Defendants.

5 65. Due to the disruptions in-and-out of the PIMCO money market and
6 fixed income funds, Canary soon arranged for their market timing trades to be
7 executed via a Bear Stearns platform. Bear Stearns arranged for Canary's trades to
8 clear T+1, meaning the trades were cleared the next day as opposed to the traditional
9 customers T+3 which requires three days to clear. This was advantageous for
10 Canary since it allowed them the opportunity to more frequently purchase and
11 redeem the funds.

12 66. During March 2002 Canary and PEA expanded their relationship after
13 correspondence between defendants Cashwell, Corba and Brean Murray. Although
14 Canary lost capacity to trade in the PEA Innovation Fund in late February due to the
15 portfolio managers' objections over the disruption Canary's trading was causing,
16 Canary was granted timing capacity in the PEA Growth and PEA Select Growth
17 Funds, in addition to the capacity already granted for trading in the PEA Target
18 Fund. In part, the market timing agreement expanded due to Cashwell's desire to
19 attract Canary's capital to PEA managed hedge funds, including the PEA Horizon,
20 Advantage and Worldwide Value hedge funds. By the end of March, Canary had
21 been granted \$100 million in market timing capacity and had finalized arrangements
22 to invest \$2 million in the PEA managed PEA Horizon hedge fund. The Canary
23 investment was yet another arrangement tied to PEA's granting of timing capacity,
24 specifically, capacity to time the PEA Opportunity Fund. This quid-pro-quo is
25 admitted to by PIMCO Fiduciary Defendants and is apparent as PEA waived the 12-
26 month lock-up period which would have otherwise penalized Canary had it
27 redeemed its investment in the PEA Horizon hedge fund within 12 months of
28 making it. This lock-up exception was not provided, or disclosed, to other PEA

1 Horizon hedge fund investors. Similar to the relational placement of the sticky
2 assets with a fund managed by defendant Corba, the PEA Horizon hedge fund was
3 managed by defendant Michael Gaffney ("Gaffney") who was also the portfolio
4 manager of the PEA Opportunity Fund.

5 67. By April 2002, Canary was timing the PEA Funds with such vigor that
6 Canary's redemption orders were being issued before the settlement on the
7 purchases had completed, despite the T+1 clearance. In essence, Canary was
8 attempting to sell shares in the PEA Funds that it did not yet control. Despite this,
9 and the fact that Canary was executing more round-trip trades than allowed by the
10 agreement, the market timing agreement continued unabated.

11 68. Despite defendant Corba's observation in an email that Canary's
12 trading pattern was "disturbing" and "the most opportunistic but extreme form of
13 market timing" that defendant Corba had witnessed, the market timing arrangement
14 continued until May 2003.

15 69. Throughout the duration of the market timing agreement, Canary made
16 132 transactions, nearly 40 round trips, involving purchases as great as \$33 million,
17 in the PEA Target Fund; 92 transactions, nearly 40 round trips, involving purchases
18 as great as \$5 trillion, the PEA Opportunity Fund; 70 transactions, 25 round trips,
19 involving purchases as great as \$33 million in the PEA Growth Fund, netting
20 Canary profits close to \$1 million between April 11, 2002 and November 21, 2002;
21 89 transactions in five PIMCO fixed income and money market funds to facilitate
22 the other market timing transactions including purchases of \$61 million in these five
23 funds between February 4, 2002 to February 7, 2002.

24 **Scheme 2: The Canary and PEA Market Timing Arrangement**

25 70. Beginning in late 2002 and continuing until September 2003, Canary,
26 through market timing consultant defendant Byck's efforts, and the PIMCO
27 Advisors executed an agreement that provided Canary with permission and
28 assistance to market time the PIMCO Funds. By the end of the scheme, Canary's

1 initial \$30 million in market timing capital increased to \$80 million. The PIMCO
2 Fiduciary Defendants assisted Canary by instructing Shareholder Services, the
3 division which policed market timing and enforced the terms of the PIMCO Funds'
4 prospectuses, to permit Canary's excessive trading.

5 71. In October 2002, defendant Ongaro asked defendant Hinman whether
6 PIMCO fixed income funds were capable of handling the trading of \$20 million in
7 market timing money once a month, or 12 times per year, an amount exceeding that
8 provided for in the prospectus. Hinman affirmed that the PIMCO Funds were
9 capable of such trading.

10 72. A day later, defendant Spalding sent an email to defendant Byck
11 concerning market timing of the PIMCO High Yield Fund. Subsequently, Spalding
12 and Byck negotiated an agreement to allow Canary to time the PIMCO Funds.

13 73. The terms provided for an initial funding of \$30 million, 12 round trips
14 per year and that the capital would be invested in the PIMCO Money Market,
15 PIMCO Short Term or PIMCO Low Duration funds when it was not invested in
16 PIMCO High Yield.

17 74. In January 2003, defendant Spalding and defendant Rodgerson agreed
18 that Shareholder Services, the division of PIMCO Advisors in charge of monitoring
19 and enforcing the terms present in the PIMCO Funds' prospectuses, including the
20 prevention of market timing, would allow Canary's orders to be executed and,
21 additionally, create monthly reports for the Canary account.

22 75. Soon thereafter, Canary began market timing the PIMCO High Yield
23 Fund and PIMCO Real Return Fund. Throughout this period, defendants Spalding
24 and Byck would regularly discuss the market timing parameters with defendants
25 Ongaro and Mallegol. Defendants Ongaro and Mallegol also received monthly
26 reports from defendant Rodgerson.

27 76. In April 2003 defendants Byck and Mallegol entered into an agreement
28 increasing Canary's market timing capacity by an additional \$80 million above the

1 initial \$30 million. Between May and August of 2003, Byck, Mallegol, PIMCO and
2 Canary caused the deposits of an additional \$80 million for market timing capacity
3 to be made in the PIMCO Funds, including \$30 million in the PIMCO Real Return
4 Fund.

5 77. Throughout the duration of the market timing agreement, Canary,
6 through various subsidiaries, made 37 transactions between the PIMCO High Yield
7 Fund and the PIMCO Money Market Fund netting a profit of approximately \$3.9
8 million, and 45 transactions between the PIMCO Real Return Fund and the PIMCO
9 Money Market Fund netting a profit of \$180,333.

10 78. The activity alleged herein is the subject of an administrative complaint
11 filed on February 15, 2004 by the Attorney General of New Jersey against ADAM,
12 PAD, PEA, and PIMCO Advisors charging those defendants with violating various
13 New Jersey state anti-fraud statutes. That complaint also alleges that Canary, Byck,
14 Brean Murray and the PIMCO Defendants agreed that, in exchange for sticky
15 investments, including the \$25 million investment in the PEA Select Growth Fund
16 and the \$2 million investment in the PIMCO Defendants-controlled PEA Horizon
17 hedge fund, Canary would be provided \$110 million in market timing capacity in
18 various PIMCO Funds.⁴

19 79. The market timing arrangement between the PIMCO Defendants,
20 Canary and John Does 51-100 allowed and facilitated the Canary and John Does 51-
21 100 illicit market timing conduct, which, when implemented, allowed Canary and
22 John Does 51-100 to circumvent purported market timing controls at PIMCO and
23 avoid redemption fees that were in place to otherwise deter such market timing
24 activity. This arrangement was known by the defendants to be in direct violation of
25 the PIMCO Funds, as set forth in the relevant prospectuses.

26 ⁴ See *Harvey, etc. v. Allianz Dresdner Asset Management of America L.P., et*
27 *al.*, ESX-C-54-04 (N.J. Super. Ct. Ch. Div. filed Feb. 15, 2004).

28

1 80. Throughout the duration of the market timing scheme, PIMCO Funds
2 publicly maintained an excessive trading policy. For example, the fund share
3 exchange policy described in the Prospectus for the PIMCO Real Return Fund,
4 PIMCO Low Duration Fund, and PIMCO Real Return Fund, filed with the
5 Securities and Exchange Commission on October 31, 2003 states:

6 An investor should invest in the Fund for long-term investment
7 purposes only. The Trust and PIMCO each reserves the right to restrict
8 purchases of fund shares (including exchanges) when a pattern of
9 frequent purchases and sales made in response to short-term
10 fluctuations in share prices appears evident. Notice of any such
11 restrictions, if any, will vary according to the particular circumstances.

12 * * *

13 The Trust reserves the right to refuse exchange purchases (or purchase
14 and redemption and/or redemption and purchase transactions) if, in the
15 judgment of the Adviser, the transaction would adversely affect a Fund
16 and its shareholders. In particular, a pattern of transactions
17 characteristic of "market-timing" strategies may be deemed by the
18 Adviser to be detrimental to the Trust or the Fund. Currently, the Trust
19 limits the number of "round trip" exchanges investors may make. An
20 investor makes a "round trip" transaction when the investor purchases
21 shares of a particular Fund, subsequently exchanges those shares for
22 shares of a different PIMCO Fund, and then exchanges back into the
23 originally purchased fund. The Trust has the right to refuse any
24 exchange for any investor who completes (by making the exchange
25 back into the shares of the originally purchased Fund) more than six
26 round trip exchanges in any twelve-month period. The Trust reserves
27 the right to impose additional restrictions on exchanges at any time,
28

1 although it will attempt to give shareholders 30 days' prior notice
2 whenever it is reasonably able to do so.
3

4 Substantially similar language was contained in prospectuses for other PIMCO
5 Funds.

6 81. PIMCO Defendants acknowledge the harm caused to the fund by
7 market timing. Many PIMCO funds that are susceptible to market timing activity
8 impose a 2% short-term redemption fee for all redemptions or exchanges within
9 sixty (60) days of acquisition. Such a policy is meant to discourage market timers
10 and compensate the fund for the harms it sustains through such conduct. For
11 example, the December 30, 2003 prospectus for the PIMCO PEA Innovation Fund
12 states:

13 The purpose of the Redemption Fees is to defray the costs associated
14 with the sale of portfolio securities to satisfy redemption and exchange
15 requests made by "market timers" and other shortterm shareholders,
16 thereby insulating longer-term shareholders from such costs. The
17 amount of a Redemption Fee represents the Adviser's estimate of the
18 costs reasonably anticipated to be incurred by the Fund and the
19 Underlying Funds in connection with the purchase or sale of portfolio
20 securities, including international stocks, associated with an investor's
21 redemption or exchange. These costs include brokerage costs, market
22 impact costs (i.e., the increase in market prices which may result when
23 a Fund purchases or sells thinly traded stocks), and the effect of
24 "bid/asked" spreads in international markets. Transaction costs incurred
25 when purchasing or selling stocks of companies in foreign countries,
26 and particularly emerging market countries, may be significantly higher
27 than those in more developed countries. This is due, in part, to less
28 competition among brokers, underutilization of technology on the part

1 of foreign exchanges and brokers, the lack of less expensive investment
2 options (such as derivative instruments) and lower levels of liquidity in
3 foreign and underdeveloped markets.

4 82. Throughout the duration of the market timing scheme alleged herein,
5 PIMCO Defendants stopped and/or flagged ordinary individuals from market timing
6 PIMCO Funds. Between the years 2000-2003, PIMCO sent out more than 700 stop
7 notification letters and emails, identifying nearly 1,700 instances of market timing.
8 It is clear by their conduct that the PIMCO Defendants understood the damage that
9 market timing can inflict on the PIMCO Funds.

10 83. The PIMCO Defendants, Canary and John Does 51-100 perpetrated the
11 manipulative scheme on the PIMCO Funds during the aforementioned time period
12 with the complicity of the PIMCO Defendants. The scheme, which started as early
13 as October 2001, violated the Advisors' fiduciary duties to the funds but gained the
14 PIMCO Defendants substantial fees and other income for themselves and their
15 affiliates, in addition to the substantial profits that were made by the PIMCO
16 Fiduciary Defendants and John Does 51-100 by engaging in the scheme. All such
17 profits were made at the expense of the PIMCO Funds' shareholders.

18 84. The Advisor is the manager and investment advisor for all of the
19 PIMCO Funds. The Trustees of the PIMCO Funds appoint the Advisor for each
20 fund in the PIMCO Funds. The Advisor runs essential operations of the funds
21 through its responsibilities of portfolio management and administrative
22 services. The portfolio managers are all typically employees of the Advisor, not the
23 mutual funds. The Advisor makes its profit from fees it charges the funds for
24 financial advice and other services. Such fees are typically a percentage of the
25 assets in the fund, so the more assets in the family of funds, the more money the
26 Advisor makes. In what has unfortunately become a common mutual fund industry
27 practice, the timer frequently offers the fund manager/Advisor more assets in
28 exchange for the right to time, which increases the fees earned by the Advisor. In

1 return, fund managers (i.e. the Advisor) allow timers (e.g. Canary) to target specific
2 funds (e.g. the PEA Innovation Fund) which would be hurt in exchange for
3 additional money in the managers' own pockets in the form of higher management
4 fees resulting from the timers' placing of assets ("sticky funds") in other Funds
5 offered by the mutual fund company (PIMCO), usually liquid asset funds.

6 85. The PIMCO Fiduciary Defendants, employees, representatives, and
7 fiduciaries inside the PIMCO Defendants and the PIMCO Funds were direct
8 perpetrators, participants, and beneficiaries of the wrongdoing alleged herein. The
9 PIMCO Defendants assisted the PIMCO Fiduciary Defendants, Canary and John
10 Does 51-100 to engage in the illicit scheme. By failing to enforce and/or follow
11 policies and procedures set forth in PIMCO Funds' prospectuses prohibiting rapid
12 trading, the Advisor and the PIMCO Defendants allowed and encouraged Canary
13 and John Does 51-100 to engage in rapid short-term trading of the PIMCO Funds,
14 the very funds that defendants and their co-conspirators had the fiduciary duty to
15 oversee and protect from such wrongdoing, in contravention of the rules and
16 policies explicitly set forth in the PIMCO Funds' prospectuses and in breach of the
17 fiduciary duties owed to the PIMCO Funds. This conduct continued for a
18 substantial period of time and was well known by the PIMCO Defendants and by
19 the fiduciaries responsible for the management of the PIMCO Funds, and was
20 reflective of the self-dealing that pervaded the PIMCO Defendant entities.

21 86. In the face of the policies set forth in the PIMCO Fund prospectuses
22 and the conduct required by their status as fiduciaries, the PIMCO Defendants
23 knowingly and deceptively permitted, and actively facilitated, Canary and John
24 Does 51-100 market timing, by engaging in such self-dealing activity and by
25 continuing such relationships with offending individuals to allow them to conduct
26 late trading and/or market timing in the PIMCO Funds to the detriment of the
27 PIMCO Funds.

28

1 87. Despite the representations in PIMCO Fund prospectuses and related
2 documents filed with the SEC, and despite knowledge of those representations,
3 Canary and John Does 51-100 also participated in a scheme with the PIMCO
4 Defendants to engage in market timing that most other fund investors were not
5 permitted to do. The PIMCO Defendants, Canary and John Does 51-100 realized
6 significant profits as a result of these timing arrangements at the expense of PIMCO
7 Fund investors. The PIMCO Defendants, Canary and John Does 51-100 made
8 trading profits from their market timing in the PIMCO Funds. The PIMCO
9 Defendants profited by way of increased advisory and other fees.

10 88. In many cases these profits may have also reflected late trading, as
11 participants in these market timing schemes frequently negotiated a timing
12 agreement with a mutual fund management company/advisor and then proceed to
13 late trade the target funds through intermediaries.

14 89. These events have had and will have a series of deleterious effects on
15 the PIMCO Funds, including but not limited to:

16 (a) Damages including, but without limitation, their incurring excess
17 charges and expenses related to the carrying out of the market timing scheme and
18 their assets wasted in order to accommodate the market timing scheme through
19 heightened reserves and the issuance of securities at artificially deflated values;

20 (b) Loss of confidence of the investing public in the integrity and
21 management of the PIMCO Funds, thereby resulting in the PIMCO Funds losing
22 NAV and market value;

23 (c) As a result of Defendants' misconduct, the PIMCO Funds are
24 exposed to significant regulatory scrutiny and to suit by investors for losses resulting
25 from Defendants' misconduct, thereby, at a minimum, causing the PIMCO Funds to
26 incur unnecessary direct and indirect investigatory, litigation and administrative
27 costs, and potentially resulting in awards, judgments or settlements against the
28 PIMCO Funds.

1 DEMAND EXCUSED ALLEGATIONS

2 90. Plaintiffs have not made demand upon the trustees of the Trust or the
3 Trustees of the PIMCO Funds to bring an action against the PIMCO Defendants,
4 and other culpable parties to remedy such wrongdoing.

5 (a) Demand is excused because no such demand is required for the
6 Plaintiffs to assert a federal claim under Section 36(b) of the Investment Company
7 Act, 15 U.S.C. § 80a-35(b), for breach of fiduciary duty in connection with the
8 compensation and other payments paid to the Advisor.

9 (b) Demand is also excused because the unlawful acts and practices
10 alleged herein are not subject to the protection of any business judgment rule and
11 could not be ratified, approved, or condoned by disinterested and informed directors
12 under any circumstances.

13 (c) Demand is also excused because the unlawful acts and practices
14 alleged herein involve self-dealing on the part of the PIMCO Defendants and its
15 directors and officers, who manage and control the day-to-day affairs of the Trust
16 and the PIMCO Funds.

17 (d) Demand upon the Trustees is also excused because the Trustees
18 of the Trust are all hand-picked by PIMCO management and thus owe their
19 positions as well as their loyalties solely to PIMCO management and lack sufficient
20 independence to exercise business judgment. Because the Trust oversees numerous
21 separate funds, the Trustees derive substantial revenue and other benefits for their
22 services.

23 (e) Finally, demand is excused because such demand would be
24 futile. The unlawful acts and practices alleged herein have been the subject of an
25 intense investigation by numerous state and federal regulators including the SEC,
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1 the New York Attorney General and the Attorney General of New Jersey.⁵ The
2 Trustees already have been informed of the wrongdoing alleged herein and have
3 failed and refused to take appropriate action to recover damages for the PIMCO
4 Funds. Moreover, the Trustees' lackadaisical response, as demonstrated by the
5 Trustees and the Advisors' failure to take action to recover damages on behalf of the
6 PIMCO Funds despite awareness of the illicit conduct, is clearly insufficient and
7 demonstrative of the conflicts, and true allegiances, of the Trustees of the Trust.
8 Moreover, the PIMCO defendants have responded to the New Jersey allegations by
9 denying that the alleged acts took place, going so far as stating in a full page *Wall*
10 *Street Journal* and *New York Times* ad that "PIMCO has never had any
11 arrangements pertaining to 'sticky funds,' late trading/stale pricing arbitrage, or
12 improper dissemination of fund holdings." By failing to take any action other than a
13 defensive action until long after being on notice of such activities by federal and
14 state investigations, the PIMCO Defendants and Trustees of the PIMCO Funds
15 acquiesced in or condoned such conduct. No shareholder demand would reasonably
16 have caused them to change their complicit disregard for the wrongdoing.

17 **COUNT I**

18 **Violation Of Section 36 Of The Investment Company Act And For**
19 **Control Personal Liability Under The Investment Company Act**
20 **(Against the PIMCO Defendants and the Trustees)**

21 91. Plaintiffs incorporate by reference all paragraphs above as if set forth
22 herein.

23 92. Pursuant to Section 36 of the Investment Company Act, 15 U.S.C.
24 § 80a-35(b), the investment advisor of a mutual fund owes to the mutual fund and its
25 shareholders a fiduciary duty with respect to its receipt of compensation for services

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27 ⁵ See *Harvey, etc. v. Allianz Dresdner Asset Management of America L.P., et*
28 *al.*, ESX-C-54-04 (N.J. Super. Ct. Ch. Div. filed Feb. 15, 2004).

1 or payments of any material nature, paid by the mutual fund or its shareholders to
2 such investment advisor or any affiliated person.

3 93. Pursuant to Section 36(b) of the Investment Company Act, 15 U.S.C.
4 § 80a-35(b), a civil action may be brought by a mutual fund shareholder against an
5 investment advisor or any affiliated person who has breached his or its fiduciary
6 duty concerning such compensation or other payments.

7 94. As alleged above in this Complaint, each PIMCO Defendant and each
8 Trustee breached his or its fiduciary duty with respect to the receipt of compensation
9 or other payments from the PIMCO Funds or their shareholders.

10 95. By agreeing and/or conspiring amongst themselves and with John Does
11 51-100 to permit and/or encourage the PIMCO Fiduciary Defendants and John Does
12 51-100 to time the PIMCO Funds, the PIMCO Defendants placed their own self-
13 interest in maximizing their compensation and other payments over the interest of
14 the PIMCO Funds and its shareholders.

15 96. By virtue of the foregoing, the PIMCO Defendants and the Trustees
16 have violated Section 36(b) of the Investment Company Act, 15 U.S.C. § 80a-35(b).

17 97. As a direct and proximate result of the PIMCO Defendants' wrongful
18 conduct, the assets and value (including the NAV) of the PIMCO Funds have been
19 reduced and diminished and the corporate assets of the PIMCO Funds have been
20 wasted and the PIMCO Defendants and the Trustees are liable.

21 **COUNT II**

22 **Common Law Breach Of Fiduciary Duty**

23 **(Against the PIMCO Defendants and the Trustee Defendants)**

24 98. Plaintiffs incorporate by reference all paragraphs above as if set forth
25 herein.

26 99. The PIMCO Defendants and the Trustee Defendants and each of them
27 owed to the PIMCO Total Return Fund, the PIMCO Foreign Bond Fund, the
28 PIMCO Real Return Fund, the PIMCO Real Return Strategy Fund, the PIMCO Low

1 Duration Fund, the PIMCO Funds Trust, and the PIMCO Funds, and their
2 shareholders, the duty to exercise due care and diligence, honesty and loyalty in the
3 management and administration of the affairs of each PIMCO Fund and in the use
4 and preservation of its property and assets, and owed the duty of full and candid
5 disclosure of all material facts thereto. Further, said defendants owed a duty to the
6 PIMCO Funds and their shareholders not to waste the funds' corporate assets and
7 not to place their own personal self-interest above the best interest of the funds and
8 their shareholders.

9 100. To discharge those duties, the PIMCO Defendants and the Trustee
10 Defendants were required to exercise prudent supervision over the management,
11 policies, practices, controls, and financial and corporate affairs of the PIMCO
12 Funds.

13 101. As alleged above, each of said defendants breached his or its fiduciary
14 duty by receiving excessive compensation or payments in connection with the
15 timing scheme and other manipulative schemes as alleged in this Complaint.

16 102. As alleged above, each of said defendants also breached his or its
17 fiduciary duty to preserve and not to waste the assets of the PIMCO Funds by
18 permitting or incurring excess charges and expenses to the funds in connection with
19 the timing scheme and other manipulative schemes as alleged in this Complaint.

20 **COUNT III**

21 **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

22 **(Against the Market Timing Consultant Defendants,**

23 **Canary and John Does 51-100)**

24 103. Plaintiffs incorporate by reference all paragraphs above as if set forth
25 herein.

26 104. The Market Timing Consultant Defendants, Canary and John Does 51-
27 100, knew of the existence of the fiduciary duty between the PIMCO Defendants
28 and the Trustee Defendants and the PIMCO Funds and knew the extent of that duty.
The Market Timing Consultant Defendants, Canary and John Does 51-100, knew of

1 the acts of late trading and timing made by them in the PIMCO Funds and knew that
2 these acts and manipulative devices were a breach of the fiduciary duties the
3 PIMCO Defendants and the Trustee Defendants owed to the PIMCO Funds. The
4 Market Timing Consultant Defendants, Canary and John Does 51-100, maliciously,
5 without justification and through unlawful means, aided and abetted and conspired
6 with the PIMCO Defendants and the Trustee Defendants in breaching their fiduciary
7 duties and provided substantial assistance and encouragement to the PIMCO
8 Defendants and the Trustee Defendants in violating their fiduciary duties in the
9 manner and by the actions described in this Complaint.

10 105. The Market Timing Consultant Defendants, Canary and John Does 51-
11 100, are jointly and severally liable to the PIMCO Funds for damages proximately
12 caused by their aiding and abetting as alleged herein.

13 106. As a direct and proximate result of defendants' wrongful conduct, the
14 assets and value (including the NAV) of the PIMCO Funds have been reduced and
15 diminished and the corporate assets of the PIMCO Funds have been wasted.

16 **COUNT IV**
17 **CIVIL CONSPIRACY**

18 (Against the PIMCO Defendants, the Advisor, Canary,
19 the Market Timing Consultant Defendants and John Does 1-100)

20 107. Plaintiffs incorporate by reference all paragraphs above as if set forth
21 herein.

22 108. The PIMCO Defendants, the Advisor, Canary, the Market Timing
23 Consultant Defendants and John Does 1-100 entered into an agreement or
24 agreements or combinations with each other to accomplish by common plan the
25 illegal acts described in this Complaint and by their actions demonstrated the
26 existence of an agreement and combination.

27 109. The PIMCO Defendants, the Advisor, Canary, Market Timing
28 Consultant Defendants and John Does 1-100 by their actions have manifested actual

1 knowledge that a tortious or illegal act or acts was planned and their intention to aid
2 in such act or acts.

3 110. The PIMCO Defendants, the Advisor, Canary, Market Timing
4 Consultant Defendants and John Does 1-100 maliciously and intentionally
5 conspired, combined and agreed with one another to commit the unlawful acts
6 alleged in this Complaint or to commit acts by unlawful means causing injury to
7 Plaintiffs and proximately causing injury and damages to the Plaintiffs for which
8 they are jointly and severally liable.

9 111. The PIMCO Funds have suffered damages as a result of the wrongs and
10 the conspiracy to commit such wrongs as alleged in the Complaint in an amount to
11 be proved at trial.

12 **WHEREFORE**, Plaintiffs pray for judgment as follows:

13 A. Removing the current Trustees of the Trust and replacing them with
14 independent Trustees,

15 B. Awarding monetary damages against all of the Defendants, jointly and
16 severally, in favor of the PIMCO Funds, for all losses and damages suffered as a
17 result of the wrongdoings alleged in this Complaint, including punitive damages
18 where appropriate, together with interest thereon,

19 C. Awarding Plaintiffs the fees and expenses incurred in this action,
20 including reasonable allowance of fees for plaintiffs' attorneys and experts,

21 D. Granting Plaintiffs such other and further relief as the Court may deem
22 just and proper.

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JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all issues so triable.

Dated: April 28, 2004

WOLF HALDENSTEIN ADLER

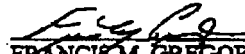
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Attorneys for Plaintiffs

FD-400 (REV. 10-1-14)

VERIFICATION OF PLAINTIFF

Edward Segel, IRA f/u/b/o Edward I. Segel, the plaintiff in the above styled action declares:

I purchased shares of PIMCO Real Return Fund and PIMCO Low Duration Fund and continue to hold such shares. I reviewed the Complaint and authorized counsel to file the Complaint. This action is not collusive to confer jurisdiction on the United States which it would not otherwise have.

I declare the above to be true under the penalty of perjury.

Dated: 4/15/04

Edward I. Segel
Edward I. Segel

VERIFICATION OF PLAINTIFF

Iris Segel IRA f/u/b/o Iris Segel, the plaintiff in the above styled action declares:

I purchased shares of PIMCO Total Return Fund, PIMCO Foreign Bond Fund, PIMCO Real Return Fund and PIMCO Commodity Real Return Strategy Fund and continue to hold such shares. I reviewed the Complaint and authorized counsel to file the Complaint. This action is not collusive to confer jurisdiction on the United States which it would not otherwise have.

I declare the above to be true under the penalty of perjury.

Dated: 4/27/04

Iris Segel

Iris Segel

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EXHIBIT A

Exhibit A**The PIMCO Funds**

The PIMCO Funds is comprised of portfolios that offer domestic and international equity and fixed-income investments which includes, but is not limited to, the following (organized by advisor):

Pacific Investment Management Company LLC (PIMCO Advisors)

StockPLUS	Total Return Mortgage	CA Muni Bond
StockPLUS Total Return	Diversified Income	NY Muni Bond
Short-Term	High Yield	Real Return
Low Duration	Global Bond II	CommodityRealReturn Strategy
Short Duration Municipal Income	Foreign Bond	All Asset
Money Market	Emerging Markets Bond	Asset Allocation
Total Return	Municipal Bond	International StockPLUS TR
Long-Term U.S. Govt.	CA Intermediate Muni Bond	Strategy
GNMA		RealEstateRealReturn Strategy

PEA Capital LLC (PEA)

PEA Value	PEA Renaissance	PEA Growth and Income
PEA Growth	PEA Target	PEA Opportunity
PEA Innovation		

NFI Investment Group L.P. (NFI)

NFI Large-Cap Value	NFI Dividend Value	NFI Small-Cap Value
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Cadence Capital Management LLC (Cadence)

CCM Capital Appreciation	CCM Mid-Cap
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RCM Capital Management LLC (RCM)

RCM Large-Cap Growth	RCM Tax-Managed Growth	RCM Mid-Cap
RCM Global Small-Cap	RCM International Growth Equity	RCM Global Healthcare
RCM Biotechnology	RCM Global Technology	Asset Allocation

Nicholas-Applegate Capital Management LLC (NACM)

NACM Value	NACM Flex-Cap	NACM Growth
NACM Global	NACM International	NACM Pacific Rim